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APR 30 1998

Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

Re: CommNet Cellular Inc., et al.

Dear Ms. Salas:

On behalf of CommNet Cellular Inc. and its subsidiaries and affiliates licensed by the Commission to provide Commercial Mobile Radio Service (collectively "CommNet"), we are transmitting herewith the original and four copies of its "Petition For Extension Of Compliance Date" with respect to the requirements of the Communications Assistance for Law Enforcement Act.

Please refer any inquiries or correspondence in connection with this matter to our offices.

Very truly yours,

Robert M. Jackson

Attachment  
cc(w/att): Joy Robertson

Four Copies rec'd  
11 ABODE

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APR 30 1998

Federal Communications Commission  
Office of Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )  
 )  
Petition for the Extension of the )  
Compliance Date under Section 107 )  
of the Communications Assistance )  
for Law Enforcement Act )  
by CommNet Cellular Inc. )

To: The Commission

PETITION FOR EXTENSION OF COMPLIANCE DATE

COMMNET CELLULAR INC.

Joy Robertson  
Assistant Vice President,  
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8350 East Crescent Parkway  
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Englewood, CO 80111  
(303) 694-8589

## CONTENTS

SUMMARY.....	1
I. BACKGROUND.....	3
A. The Petitioner.....	3
B. The Industry Standard.....	5
C. Commission Procedures for Extension.....	7
II. APPLICABLE LAW.....	8
A. Grounds for Extension.....	8
B. Length of Extension.....	9
C. Conditions for Extension.....	9
D. Obligations Pending Ruling - Tolling.....	10
E. Petition Procedures.....	11
III. CONCLUSION.....	12

### SUMMARY

CommNet Cellular Inc. and its subsidiaries and affiliates licensed by the Commission to provide commercial mobile radio services, as listed on Exhibit A, hereto, (collectively "CommNet") brings this petition under Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001 et seq., seeking an extension of CALEA's October 25, 1998, compliance date to at least October 24, 2000, because CALEA-compliant hardware and software will not be available within the compliance period, as stated by CommNet's major telecommunications equipment vendor, Northern Telecom Inc. ("Nortel"), in the attached letter, (Exhibit B).

This extension request is urgent. Further development of a CALEA solution in the face of the unstable industry standard would expose CommNet's major telecommunications equipment vendor to potentially enormous expense of money and engineering resources, because any modification to the existing industry standard could require significant changes in our vendor's solutions. Given the current stage of development, our vendor will soon reach a "point of no return" whereby development commitments toward the existing standard will become irreversible. Thus, CommNet requires an immediate response to this extension request.

Accordingly, CommNet requests that the Commission grant the extension as soon as possible, effective October 25, 1998, for the full two-year period.

**APR 30 1998**

**Federal Communications Commission  
Office of Secretary**

To: The Commission

CommNet Cellular Inc. and its subsidiaries and affiliates licensed by the Commission to provide commercial mobile radio services, as listed on Exhibit A, hereto, (collectively "CommNet") brings this petition under Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001 et seq., seeking an extension of CALEA's October 25, 1998, compliance date to at least October 24, 2000, because CALEA-compliant hardware and software will not be available within the compliance period.

CommNet is a leading provider of rural wireless communications services in the United States. CommNet is a

"telecommunications carrier" as that term is defined in Section 102(8) of CALEA. 47 U.S.C. § 1001(8)(B)(i) ("a person or entity engaged in providing commercial mobile radio service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. § 332(d)))"). As such, CommNet is obligated to meet the assistance capability requirements of Section 103 of CALEA for equipment, services or facilities installed or deployed after January 1, 1995.

To meet these obligations, CommNet must consult, as necessary, in a timely fashion, "with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services." See 47 U.S.C. § 1005(a).

Northern Telecom Inc. ("Nortel") is CommNet's major telecommunications equipment manufacturer. Nortel works with customers in more than 150 countries to design, build, and integrate their communications products and advanced digital networks. Customers include public and private institutions; internet service providers; local, long-distance, cellular mobile, and PCS communications companies; cable television companies; and utilities. Nortel's research capabilities around the world include a network of research and development facilities fostering innovative product development and advanced design research in sixteen countries. Nortel has participated in the standards process from the outset in order

to make available, on a reasonably timely basis and at a reasonable charge, such features or modifications as are necessary to permit CommNet to meet CALEA's assistance capability requirements, as stated in the attached letter, (Exhibit B).

#### **B. The Industry Standard**

The Commission is well aware of the history of the development of the industry standard and its adoption on November 20, 1997, as an interim standard.<sup>1</sup> The Commission also knows that the Federal Bureau of Investigation ("FBI") has long claimed that the standard is deficient because it does not include certain enhanced surveillance functionality that law enforcement deems important.<sup>2</sup>

On March 27, 1998, the FBI challenged the industry standard as "deficient" by filing a petition with the Commission under Section 107(b). Further, privacy advocates filed a deficiency petition on March 25, 1998, claiming that

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<sup>1</sup> See In the Matter of Communications Assistance for Law Enforcement Act, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356, released October 10, 1997 [hereinafter "FCC NPRM"], ¶ 44 (recognizing that the industry standard was pending ballot comments); see also FCC NPRM Comments of TIA, filed December 12, 1997, at 6 (advising Commission that TIA had approved and published J-STD-025 as TIA interim standard).



the existing industry standard goes too far in providing law enforcement certain capabilities and fails to protect the privacy of communications not authorized to be intercepted.

The Commission now must establish by rule, on the record and with public comment, the technical requirements or standards necessary to implement the assistance capability requirements of CALEA. 47 U.S.C. § 1006(b). With the industry standard now in a de jure limbo, the development of CALEA-compliant technology must await the outcome of the Commission's proceedings.<sup>3</sup>

As the Commission knows, and as the FBI itself has recognized, the ordinary development cycle for hardware and software is 24 months after promulgation of a standard.<sup>4</sup>

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<sup>2</sup> See FCC NPRM Comments of FBI, filed December 12, 1997, at 37-38.

<sup>3</sup> It is not the purpose of this petition to comment on the FBI's deficiency petition. CommNet recognizes that the Commission may provide a reasonable time and conditions for compliance with and the transition to any new standard as part of that rulemaking. 47 U.S.C. § 1006(b)(5). CommNet believes that, at a minimum, the extension requested in this Petition should be granted, but reserves the right to seek a longer period of time based on the complexity of, or any additions to, the industry standard as a result of the deficiency petition rulemaking.

<sup>4</sup> See FCC NPRM Comments of TIA, at 9 ("Standard industry practice requires 24-30 months of development before manufacturers can even release a software package containing new features."); see also Department of Justice Communications Assistance for Law Enforcement Act Implementation Report to Congress, January 26, 1998,

There is no dispute that the standardized delivery of electronic surveillance information is critical to the efficient implementation of CALEA. Indeed, law enforcement itself depends on the development and implementation of a standard to develop its collection equipment necessary to receive surveillance information from carriers.<sup>5</sup> Accordingly, the absence of a stable standard ensures delay in the delivery of CALEA-compliant technology and underscores the need for an extension of the compliance date.

### **C. Commission Procedures for Extension**

In the FCC NPRM, the Commission stated that October 24, 1998 is the last day by which an extension may be sought and that the Commission may grant an extension of time until October 24, 2000.<sup>6</sup> The Commission did not promulgate specific rules for submitting requests, but proposed to permit carriers to petition the Commission for an extension on the basis of

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cited in FCC NPRM Reply Comments of Cellular Telecommunications Industry Association ("CTIA"), Attachment D.

<sup>5</sup> It is the understanding of CommNet that no contracts have been let by the FBI for the development of collection equipment. Thus, even if a carrier was poised to deliver electronic surveillance information consistent with the industry standard or as enhanced by the FBI punch list, law enforcement would not be able to receive it. This further supports the validity of an extension.

<sup>6</sup> See In the Matter of Communications Assistance for Law Enforcement Act, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356, released October 10, 1997, ¶ 49.

criteria specified in Section 109 to determine whether it is reasonably achievable for the petitioning carrier to comply.<sup>7</sup>

## **II. APPLICABLE LAW**

### **A. Grounds for Extension**

Section 107(c) of CALEA provides the following grounds for granting an extension:

The Commission may, after consultation with the Attorney General, grant an extension under this subsection, if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period.

47 U.S.C. § 1006(c) (emphasis added). As noted above and in Exhibit B, CommNet's major vendor will not have CALEA-compliant technology available within the compliance period or for up to two years thereafter.

As the Commission no doubt understands, manufacturers have not been idle. However, further proceeding with current development in the face of the unstable industry standard would expose vendors to potentially enormous expense of money and engineering resources, because any modification to the

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<sup>7</sup> Id., ¶ 50.

existing industry standard could require significant changes in the vendor's CALEA solution. Given the current stage of development, CommNet's vendor will soon reach a "point of no return" whereby development commitments toward the existing standard will become irreversible. Thus, CommNet requires an immediate response to this extension request.

#### **B. Length of Extension**

Section 107 provides that the Commission shall extend the compliance date for the lesser of two years after the date on which the extension is granted or the period the Commission finds is necessary for the carrier to comply. There is no dispute, even with the FBI, that it takes up to two years to develop technology to an industry standard. Carriers then need time to field test and deploy the technology. Thus, two years may not be enough time to meet the assistance capability requirements of CALEA and further extensions may be necessary.

Accordingly, CommNet requests that the Commission grant the extension, effective October 25, 1998, for the full two-year period.

#### **C. Conditions for Extension**

CommNet has a statutory obligation under Section 106 of CALEA to continue to consult and cooperate to ensure that CALEA-compliant hardware and software will be available on a

reasonably timely basis and at a reasonable charge. No other terms or conditions are necessary or appropriate in granting this petition.<sup>8</sup>

**D. Obligations Pending Ruling - Tolling**

Section 108 of CALEA permits the Attorney General to seek an order in federal district court to enforce CALEA.

47 U.S.C. § 1007. CALEA authorizes penalties of \$10,000 per day per violation. 18 U.S.C. § 2522. Further, standing alone, and without an extension from the Commission or other relief, the absence of a stable standard does not relieve CommNet from its obligations under CALEA. 47 U.S.C. § 1006(a)(3)(B). Thus, if the Commission fails to act on this petition by October 25, 1998, CommNet could be subject to an enforcement action even though this extension petition was timely filed.

Accordingly, CommNet requests that the Commission expressly toll the CALEA compliance date during the pendency

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<sup>8</sup> CommNet does not believe that the Commission should, or is empowered to, impose other terms or conditions on this extension. Section 107(b), unlike an extension petition under subsection (c), explicitly authorizes the Commission to provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the carrier's obligations under Section 103 during the transition to a new standard. No such authority is granted to the Commission under the provisions of CALEA pursuant to which this extension is sought.

of this petition in the event that the Commission requires longer than the remaining time in the compliance period to decide this matter. Further, if the petition is denied, CommNet requests that the Commission grant a reasonable period of time thereafter to permit CommNet to comply with the Commission's decision.

#### **E. Petition Procedures**

CALEA does not specify the nature of the Commission's consultation with the FBI under Section 107. However, Congress made it clear that accountability was to be the hallmark of CALEA, stating that "all proceedings before the FCC will be subject to public scrutiny, as well as congressional oversight and judicial review."<sup>9</sup> Thus, the Commission's consultation with the Attorney General must be on the record.<sup>10</sup>

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<sup>9</sup> See House Report No. 103-827 at 20, reprinted in 1994 U.S.C.C.A.N 3489, 3500 (emphasis added).

<sup>10</sup> This petition is not based on proprietary or confidential information. There is no reason, therefore, to conduct a closed or restricted proceeding.

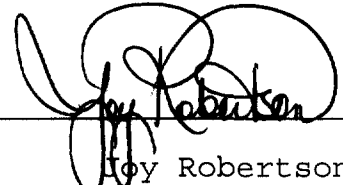
### III. CONCLUSION

For all of the reasons set forth above, CommNet requests that the Commission grant a two-year extension of the CALEA compliance date to October 24, 2000, effective October 25, 1998.

WHEREFORE, good cause shown, CommNet requests that this petition be granted.

COMMNET CELLULAR INC.

By: \_\_\_\_\_



Joy Robertson  
Assistant Vice President,  
Regulatory & Government Affairs  
8350 East Crescent Parkway  
Suite 400  
Englewood, CO 80111  
(303) 694-8589

Dated: April 30, 1998.

**EXHIBIT A**  
**CommNet Cellular Inc.'s Subsidiaries And Affiliates**  
**Licensed To Provide Commercial Mobile Radio Service**

- 1) Badlands Cellular of North Dakota Limited Partnership
- 2) Bismarck MSA Limited Partnership
- 3) Cellular Inc. Network Corporation
- 4) Colorado 4 - Park Limited Partnership
- 5) Colorado 7 - Saguache Limited Partnership
- 6) Eastern South Dakota Cellular of South Dakota  
Limited Partnership
- 7) Gold Creek Cellular of Montana Limited Partnership
- 8) Idaho 6 - Clark Limited Partnership
- 9) Iowa 8 - Monona Limited Partnership
- 10) Iowa RSA No. 13 Limited Partnership
- 11) Iowa RSA No. 14 Limited Partnership
- 12) Iowa 15 - Dickinson Limited Partnership
- 13) Iowa 16 - Lyon Limited Partnership
- 14) North Central RSA 2 of North Dakota Limited Partnership
- 15) North Dakota 5 - Kidder Limited Partnership
- 16) Northern New Mexico Limited Partnership
- 17) Northwest Dakota Cellular of North Dakota Limited Partnership
- 18) Platte River Cellular of Colorado Limited Partnership
- 19) Pueblo MSA Limited Partnership
- 20) San Isabel Cellular of Colorado Limited Partnership
- 21) Sioux City MSA Limited Partnership
- 22) Sioux Falls Cellular Limited Partnership
- 23) Smoky Hill Cellular of Colorado Limited Partnership



- 24) South Dakota 7 - Sully Limited Partnership
- 25) South Dakota 8 - Kingsbury Limited Partnership
- 26) Steamboat Springs Cellular General Partnership
- 27) Two Buttes Cellular of Colorado Limited Partnership
- 28) Utah RSA 6 Limited Partnership
- 29) Wyoming 1 - Park Limited Partnership

Northern Telecom  
2221 Lakeside Blvd  
Richardson TX 75082-4399

PO Box 833858  
Richardson TX 75083-3858

Tel 972 684-1000

EXHIBIT B

ORIGINAL

April 27, 1998

Lara Wolfe  
8350 East Crescent Parkway Ste. 400  
Englewood, Co. 80111

**NORTEL**  
NORTHERN TELECOM

Dear Lara:

Northern Telecom Inc. ("Nortel") is a supplier of MTX telecommunications switching technology ("Technology") for CommNet. In connection with the Communications Assistance for Law Enforcement Act ("CALEA"), CommNet has requested that Nortel indicate whether Nortel will have available to CommNet by October 25, 1998, Technology consisting of new systems and upgrades to CommNet's existing Technology to provide wiretap assistance capability pursuant to Section 103(b) of CALEA in accordance with the current definition of that capability by law enforcement. For purposes of this statement, Nortel understands that law enforcement's current definition of such capability consists of the J-STD-025 standard adopted by Committee TR-45.2 of the Telecommunications Industry Association in December 1997 as supplemented by nine (9) additional features known as the "punch list" features described in the Joint Petition for Expedited Rulemaking filed by the Federal Bureau of Investigation ("FBI") and the U. S. Department of Justice with the Federal Communications Commission on March 27, 1998. This will confirm that, for several reasons, Nortel will not have such technology available to CommNet by October 25, 1998.

Notwithstanding the foregoing, Nortel intends to fully comply with its obligations under CALEA. Under Section 106(b) of CALEA, Nortel, as a manufacturer of the technology, shall make available "...on a reasonably timely basis and at a reasonable charge..." to CommNet such features or modifications as are necessary to comply with the assistance capability requirements and capacity requirements of CALEA.

Nortel, like other manufacturers, needs a reasonable time to develop solutions after a design target is identified in a standard and appropriate funding commitments have been made. To date, no stable design target is in place nor have any funding commitments been made. The "punch list" is not yet in a standard and J-STD-025 was only recently adopted in December 1997. Therefore, Nortel will not have had a reasonable time to develop Technology for CommNet with the wiretap capability, as defined by law enforcement, for delivery by October 25, 1998. Generally, 24 to 36 months are needed to develop technology compatible with a given design target, once that target has been established. This typical development cycle could require

more than two years after October 25, 1998, depending upon what additional requirements might be needed.

Nortel like other manufacturers would be risking tremendous resources, incurring lost opportunity costs and hindering the development of new services and technologies in attempting to develop CALEA compliant Technology without the guidance of a stable, definite design target. As a result of the competing petitions regarding the scope of the assistance capability requirements and other circumstances, no stable standard or design target exists. Adoption of a design attempting to meet the J-STD-025 and punch list features at this time represents a potentially significant waste of fiscal and personnel resources should the chosen design deviate from a future standard.

Regards,

A handwritten signature in black ink, appearing to read "Shawn P. Doyle". The signature is fluid and cursive, with a large, sweeping initial 'S'.

Shawn P. Doyle  
Vice President, Sales  
Nortel Wireless Networks